

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2315

Introduced by
Representatives Driggs: Barto, Crandall, Crump, Goodale, Murphy, Senator
Gray L

AN ACT

AMENDING SECTIONS 8-238, 8-350, 13-704, 13-708, 13-3419, 13-4515, 41-1604.10 AND 41-1604.13, ARIZONA REVISED STATUTES; CHANGING THE DESIGNATION OF TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, TO "SENTENCING AND IMPRISONMENT"; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-238, Arizona Revised Statutes, is amended to
3 read:

4 8-238. Advisory hearing; DNA

5 A. If a juvenile is arrested for a violation of any of the following
6 offenses and is summoned to appear at an advisory hearing, the judicial
7 officer shall order the juvenile to report within five days to the law
8 enforcement agency that arrested the ~~person~~ JUVENILE or to the agency's
9 designee and submit a sufficient sample of buccal cells or other bodily
10 substances for deoxyribonucleic acid testing and extraction:

11 1. An offense listed in title 13, chapter 11.

12 2. A violation of section 13-1402, 13-1403, 13-1404, 13-1405, 13-1406,
13 13-1410, 13-1411 or 13-1417.

14 3. A violation of section 13-1507 or 13-1508.

15 4. A violation of any serious offense ~~pursuant to section 13-604~~
16 ~~involving the discharge, use or threatening exhibition of a deadly weapon or~~
17 ~~dangerous instrument or the intentional or knowing infliction of serious~~
18 ~~physical injury~~ AS DEFINED IN SECTION 13-706 THAT IS A DANGEROUS OFFENSE AS
19 DEFINED IN SECTION 13-105.

20 B. If a ~~person~~ JUVENILE does not comply with an order issued pursuant
21 to subsection A of this section, the court shall revoke the ~~person's~~
22 JUVENILE'S release.

23 Sec. 2. Section 8-350, Arizona Revised Statutes, is amended to read:

24 8-350. Dangerous offenders; sex offenders; notification to
25 schools; definition

26 A. If a juvenile is adjudicated delinquent for or convicted of a
27 dangerous offense or a violation of section 13-1405, 13-1406, 13-1410 or
28 13-1417 and the juvenile is placed on probation and is attending school, the
29 court shall notify the elementary or high school district in which the
30 juvenile resides that the juvenile has been adjudicated delinquent or
31 convicted and is on probation. The elementary or high school district shall
32 transmit this notice to the school that the ~~person~~ JUVENILE attends.

33 B. Elementary or high school districts and local elementary and high
34 schools through the local school district may request from the court the
35 criminal history of individual students to determine if a student has been
36 adjudicated delinquent for or convicted of a dangerous offense or a violation
37 of section 13-1405, 13-1406, 13-1410 or 13-1417.

38 C. The school that the ~~person~~ JUVENILE attends shall make the
39 information it receives pursuant to this section available to teachers,
40 parents, guardians or custodians on request.

41 D. For the purposes of this section, "dangerous offense" has the same
42 meaning prescribed in section 13-105.

43 Sec. 3. Heading change

44 The chapter heading of title 13, chapter 7, Arizona Revised Statutes,
45 is changed from "IMPRISONMENT" to "SENTENCING AND IMPRISONMENT".

1 Sec. 4. Section 13-704, Arizona Revised Statutes, is amended to read:

2 13-704. Dangerous offenders; sentencing

3 A. Except as provided in section 13-705, a person who is at least
4 eighteen years of age or who has been tried as an adult and who stands
5 convicted of a felony that is a dangerous offense shall be sentenced to a
6 term of imprisonment as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
7 Class 2	7 years	10.5 years	21 years
9 Class 3	5 years	7.5 years	15 years
10 Class 4	4 years	6 years	8 years
11 Class 5	2 years	3 years	4 years
12 Class 6	1.5 years	2.25 years	3 years

13 B. Except as provided in section 13-705, a person who is convicted of
14 a class 4, 5 or 6 felony that is a dangerous offense and who has one
15 historical prior felony conviction involving a dangerous offense shall be
16 sentenced to a term of imprisonment as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
17 Class 4	8 years	10 years	12 years
19 Class 5	4 years	5 years	6 years
20 Class 6	3 years	3.75 years	4.5 years

21 C. Except as provided in section 13-705 or section 13-706, subsection
22 A, a person who is convicted of a class 4, 5 or 6 felony that is a dangerous
23 offense and who has two or more historical prior felony convictions involving
24 dangerous offenses shall be sentenced to a term of imprisonment as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
25 Class 4	12 years	14 years	16 years
27 Class 5	6 years	7 years	8 years
28 Class 6	4.5 years	5.25 years	6 years

29 D. Except as provided in section 13-705 or section 13-706, subsection
30 A, a person who is convicted of a class 2 or 3 felony involving a dangerous
31 offense and who has one historical prior felony conviction that is a class 1,
32 2 or 3 felony involving a dangerous offense shall be sentenced to a term of
33 imprisonment as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
34 Class 2	14 years	15.75 years	28 years
36 Class 3	10 years	11.25 years	20 years

37 E. Except as provided in section 13-705 or section 13-706, subsection
38 A, a person who is convicted of a class 2 or 3 felony involving a dangerous
39 offense and who has two or more historical prior felony convictions that are
40 class 1, 2 or 3 felonies involving dangerous offenses shall be sentenced to a
41 term of imprisonment as follows:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>
42 Class 2	21 years	28 years	35 years
44 Class 3	15 years	20 years	25 years

F. A person who is convicted of two or more felony offenses that are dangerous offenses and that were not committed on the same occasion but that are consolidated for trial purposes or that are not historical prior felony convictions shall be sentenced, for the second or subsequent offense, pursuant to this subsection. **FOR A PERSON SENTENCED PURSUANT TO THIS SUBSECTION, THE MINIMUM TERM PRESCRIBED SHALL BE THE PRESUMPTIVE TERM.** If the court increases or decreases a sentence pursuant to this subsection, the court shall state on the record the reasons for the increase or decrease. The court shall inform all of the parties before the sentencing occurs of its intent to increase or decrease a sentence pursuant to this subsection. If the court fails to inform the parties, a party waives its right to be informed unless the party timely objects at the time of sentencing. The terms are as follows:

1. For the second dangerous offense:

<u>Felony</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Increased Maximum</u>
Class 2	10.5 years	21 years	26.25 years
Class 3	7.5 years	15 years	18.75 years
Class 4	6 years	8 years	10 years
Class 5	3 years	4 years	5 years
Class 6	2.25 years	3 years	3.75 years

2. For any dangerous offense subsequent to the second dangerous felony offense:

<u>Felony</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Increased Maximum</u>
Class 2	15.75 years	28 years	35 years
Class 3	11.25 years	20 years	25 years
Class 4	10 years	12 years	15 years
Class 5	5 years	6 years	7.5 years
Class 6	3.75 years	4.5 years	5.6 years

G. A person who is sentenced pursuant to subsection A, B, C, D, E or F of this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis, except as specifically authorized by section 31-233, subsection A or B, until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

H. The presumptive term authorized by this section may be mitigated or aggravated pursuant to the terms of section 13-701, subsections C, D ~~or~~ **AND** E.

I. For the purposes of determining the applicability of the penalties provided in subsection A, ~~B, C,~~ D or E of this section for second or subsequent class 2 or 3 felonies, the conviction for any felony committed before October 1, 1978 that, if committed after October 1, 1978, could be a dangerous offense under subsection A, ~~B, C,~~ D or E of this section may be designated by the state as a prior felony.

1 J. Convictions for two or more offenses committed on the same occasion
2 shall be counted as only one conviction for the purposes of subsection A, B,
3 C, D or E of this section.

4 K. A person who has been convicted in any court outside the
5 jurisdiction of this state of an offense that if committed in this state
6 would be punishable as a felony is subject to subsection A, B, C, D or E of
7 this section. A person who has been convicted of an offense punishable as a
8 felony under the provisions of any prior code in this state is subject to
9 subsection A, B, C, D or E of this section.

10 L. The penalties prescribed by this section shall be substituted for
11 the penalties otherwise authorized by law if an allegation of prior
12 conviction is charged in the indictment or information and admitted or found
13 by the court or if an allegation of dangerous offense is charged in the
14 indictment or information and admitted or found by the trier of fact. The
15 release provisions prescribed by this section shall not be substituted for
16 any penalties required by the substantive offense or provision of law that
17 specifies a later release or completion of the sentence imposed before
18 release. The court shall allow the allegation of a prior conviction or the
19 allegation of a dangerous offense at any time before the date the case is
20 actually tried unless the allegation is filed fewer than twenty days before
21 the case is actually tried and the court finds on the record that the
22 defendant was in fact prejudiced by the untimely filing and states the
23 reasons for these findings. If the allegation of a prior conviction is
24 filed, the state must make available to the defendant a copy of any material
25 or information obtained concerning the prior conviction. The charge of prior
26 conviction shall not be read to the jury. For the purposes of this
27 subsection, "substantive offense" means the felony that the trier of fact
28 found beyond a reasonable doubt the defendant committed. Substantive offense
29 does not include allegations that, if proven, would enhance the sentence of
30 imprisonment or fine to which the defendant otherwise would be subject.

31 M. Except as provided in section 13-705 or 13-751, if the victim is an
32 unborn child in the womb at any stage of its development, the defendant shall
33 be sentenced pursuant to this section.

34 Sec. 5. Section 13-708, Arizona Revised Statutes, is amended to read:

35 13-708. Offenses committed while released from confinement

36 A. A person who is convicted of any felony involving a dangerous
37 offense that is committed while the person is on probation, ~~—~~ for a conviction
38 of a felony offense or parole, work furlough, community supervision or any
39 other release or has escaped from confinement for conviction of a felony
40 offense shall be sentenced to imprisonment for not less than the presumptive
41 sentence authorized under this chapter and is not eligible for suspension or
42 commutation or release on any basis until the sentence imposed is served.

43 B. A person who is convicted of a dangerous offense that is committed
44 while the person is on release or has escaped from confinement for a
45 conviction of a serious offense as defined in section 13-706, an offense

1 resulting in serious physical injury or an offense involving the use or
2 exhibition of a deadly weapon or dangerous instrument shall be sentenced to
3 the maximum sentence authorized under this chapter and is not eligible for
4 suspension or commutation or release on any basis until the sentence imposed
5 is served. If the court finds that at least two substantial aggravating
6 circumstances listed in section 13-701, subsection D apply, the court may
7 increase the maximum sentence authorized under this chapter by up to
8 twenty-five per cent. A sentence imposed pursuant to this subsection shall
9 revoke the convicted person's release if the person was on release and shall
10 be consecutive to any other sentence from which the convicted person had been
11 temporarily released or had escaped, unless the sentence from which the
12 convicted person had been paroled or placed on probation was imposed by a
13 jurisdiction other than this state.

14 C. A person who is convicted of any felony offense that is not
15 included in subsection A or B of this section and that is committed while the
16 person is on probation for a conviction of a felony offense or parole, work
17 furlough, community supervision or any other release or escape from
18 confinement for conviction of a felony offense shall be sentenced to a term
19 of not less than the presumptive sentence authorized for the offense and the
20 person is not eligible for suspension of sentence, probation, pardon or
21 release from confinement on any basis except as specifically authorized by
22 section 31-233, subsection A or B until the sentence imposed by the court has
23 been served, the person is eligible for release pursuant to section
24 41-1604.07 or the sentence is commuted. The release provisions prescribed by
25 this section shall not be substituted for any penalties required by the
26 substantive offense or provision of law that specifies a later release or
27 completion of the sentence imposed before release. A sentence imposed
28 pursuant to this subsection shall revoke the convicted person's release if
29 the person was on release and shall be consecutive to any other sentence from
30 which the convicted person had been temporarily released or had escaped,
31 unless the sentence from which the convicted person had been paroled or
32 placed on probation was imposed by a jurisdiction other than this state. For
33 the purposes of this subsection, "substantive offense" means the felony,
34 misdemeanor or petty offense that the trier of fact found beyond a reasonable
35 doubt the defendant committed. Substantive offense does not include
36 allegations that, if proven, would enhance the sentence of imprisonment or
37 fine to which the defendant would otherwise be subject.

38 D. A person who is convicted of committing any felony offense that is
39 committed while the person is released on bond or on the person's own
40 recognizance on a separate felony offense or while the person is escaped from
41 preconviction custody for a separate felony offense shall be sentenced to a
42 term of imprisonment two years longer than would otherwise be imposed for the
43 felony offense committed while on release. The additional sentence imposed
44 under this subsection is in addition to any enhanced punishment that may be
45 applicable under section 13-703, section 13-704, section 13-709.01,

1 subsection A or section 13-709.02, subsection C. The person is not eligible
2 for suspension of sentence, probation, pardon or release from confinement on
3 any basis, except as specifically authorized by section 31-233, subsection A
4 or B, until the two years are served, the person is eligible for release
5 pursuant to section 41-1604.07 or the sentence is commuted. The penalties
6 prescribed by this subsection shall be substituted for the penalties
7 otherwise authorized by law if the allegation that the person committed a
8 felony while released on bond or on the person's own recognizance or while
9 escaped from preconviction custody is charged in the indictment or
10 information and admitted or found by the court. The release provisions
11 prescribed by this subsection shall not be substituted for any penalties
12 required by the substantive offense or provision of law that specifies a
13 later release or completion of the sentence imposed before release. The
14 court shall allow the allegation that the person committed a felony while
15 released on bond or on the person's own recognizance on a separate felony
16 offense or while escaped from preconviction custody on a separate felony
17 offense at any time before the case is actually tried unless the allegation
18 is filed fewer than twenty days before the case is actually tried and the
19 court finds on the record that the person was in fact prejudiced by the
20 untimely filing and states the reasons for these findings. The allegation
21 that the person committed a felony while released on bond or on the person's
22 own recognizance or while escaped from preconviction custody shall not be
23 read to the jury. For the purposes of this subsection, "substantive offense"
24 means the felony offense that the trier of fact found beyond a reasonable
25 doubt the person committed. Substantive offense does not include allegations
26 that, if proven, would enhance the sentence of imprisonment or fine to which
27 the person otherwise would be subject.

28 Sec. 6. Section 13-3419, Arizona Revised Statutes, is amended to read:

29 13-3419. Multiple drug offenses not committed on the same
30 occasion; sentencing

31 A. Except for a person convicted of possession offenses pursuant to
32 section 13-3405, subsection A, paragraph 1, section 13-3407, subsection A,
33 paragraph 1 or section 13-3408, subsection A, paragraph 1, a person who is
34 convicted of two or more offenses under this chapter that were not committed
35 on the same occasion but that either are consolidated for trial purposes or
36 are not historical prior felony convictions shall be sentenced for the second
37 or subsequent offense pursuant to this section. The person shall not be
38 eligible for suspension of sentence, probation, pardon or release from
39 confinement on any basis except as specifically authorized by section 31-233,
40 subsection A or B until the sentence imposed by the court has been served,
41 the person is eligible for release pursuant to section 41-1604.07 or the
42 sentence is commuted, except that a person sentenced pursuant to paragraph 1
43 of this subsection shall be eligible for probation. The presumptive term for
44 paragraph 1, 2, 3 or 4 of this subsection may be aggravated within the range
45 under this section pursuant to section 13-701, subsections C and D. The

presumptive term for paragraph 1, 2 or 3 of this subsection may be mitigated within the range under this section pursuant to section 13-701, subsections C and E. The terms are as follows:

1. For two offenses for which the aggregate amount of drugs involved in one offense or both of the offenses is less than the statutory threshold amount for the second offense:

<u>Felony</u>	<u>MITIGATED</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>AGGRAVATED</u>
Class 2	3 YEARS	4 years	5 years	10 years	12.5 YEARS
Class 3	1.8 YEARS	2.5 years	3.5 years	7 years	8.7 YEARS
Class 4	1.1 YEARS	1.5 years	2.5 years	3 years	3.7 YEARS
Class 5	.5 YEARS	.75 years	1.5 years	2 years	2.5 YEARS

2. For three or more offenses for which the aggregate amount of drugs involved in one offense or all of the offenses is less than the statutory threshold amount for any offense subsequent to the second offense:

<u>Felony</u>	<u>MITIGATED</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>AGGRAVATED</u>
Class 2	3 YEARS	4 years	5 years	10 years	12.5 YEARS
Class 3	1.8 YEARS	2.5 years	3.5 years	7 years	8.7 YEARS
Class 4	1.1 YEARS	1.5 years	2.5 years	3 years	3.7 YEARS
Class 5	.5 YEARS	.75 years	1.5 years	2 years	2.5 YEARS

3. For two offenses for which the aggregate amount of drugs involved in one offense or all of the offenses equals or exceeds the statutory threshold amount for the second offense:

<u>Felony</u>	<u>MITIGATED</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>AGGRAVATED</u>
Class 2	3 YEARS	4 years	5 years	10 years	12.5 YEARS
Class 3	1.8 YEARS	2.5 years	3.5 years	7 years	8.7 YEARS
Class 4	1.1 YEARS	1.5 years	2.5 years	3 years	3.7 YEARS
Class 5	.5 YEARS	.75 years	1.5 years	2 years	2.5 YEARS

4. For three or more offenses for which the aggregate amount of drugs involved in one offense or all of the offenses equals or exceeds the statutory threshold amount for any offense subsequent to the second offense:

<u>Felony</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>AGGRAVATED</u>
Class 2	4 years	7 years	12 years	15 YEARS
Class 3	2.5 years	5 years	9 years	11.2 YEARS
Class 4	1.5 years	3 years	5 years	6.2 YEARS
Class 5	.75 years	2.5 years	4 years	5 YEARS

~~B. For offenders who are sentenced pursuant to subsection A of this section the court may increase the maximum sentence otherwise authorized by up to twenty-five per cent.~~

~~C. For offenders who are sentenced pursuant to subsection A, paragraph 1, 2 or 3 of this section the court may decrease the minimum sentence otherwise authorized by up to twenty-five per cent.~~

~~D.~~ B. If the court increases or decreases a sentence pursuant to this section, the court shall state on the record the reasons for the increase or decrease.

~~E.~~ C. The court shall inform all of the parties before the sentencing occurs of its intent to increase or decrease a sentence pursuant to this section. If the court fails to inform the parties, a party waives its right to be informed unless the party timely objects at the time of sentencing.

Sec. 7. Section 13-4515, Arizona Revised Statutes, is amended to read:

13-4515. Duration of order; notice of dismissed charge or voided order; petitions

A. An order or combination of orders that is issued pursuant to section 13-4512 or 13-4514 shall not be in effect for more than twenty-one months or the maximum possible sentence the defendant could have received pursuant to section 13-702, section 13-703, section 13-704, SUBSECTION A, B, C, D OR E, section 13-705, section 13-706, subsection A, section 13-708, subsection D or section 13-751 or any section for which a specific sentence is authorized, whichever is less. In making this determination the court shall not consider the sentence enhancements under section 13-703 or 13-704 for prior convictions.

B. The court shall notify the prosecutor, the defense attorney, the medical supervisor and the treating facility if the charges against the defendant are dismissed or if an order is voided by the court. No charges shall be dismissed without a hearing prior to the dismissal.

C. If a defendant is discharged or released on the expiration of an order or orders issued pursuant to section 13-4512 or 13-4514, the medical supervisor may file a petition stating that the defendant requires further treatment pursuant to title 36, chapter 5 or appointment of a guardian pursuant to title 14.

Sec. 8. Section 41-1604.10, Arizona Revised Statutes, is amended to read:

41-1604.10. Earned release credits; forfeiture; restoration; applicability

A. Each prisoner classified as parole eligible, class one, pursuant to section 41-1604.09, shall be allowed the following release credits:

1. If sentenced upon a first conviction other than pursuant to section 13-751 or other than for a felony ~~involving the use or exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury upon another~~ THAT IS A DANGEROUS OFFENSE, every two days served within class one shall be counted as an earned release credit of one day.

2. If sentenced pursuant to ~~the~~ section 13-703, subsection B, paragraph 2, or upon first conviction of a class 4, 5 or 6 felony ~~involving the use or exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury~~ THAT IS A DANGEROUS OFFENSE or any other provisions of law which prohibits release on any basis until serving not less than one-half the sentence imposed by the court, every two days served within class one shall be counted as an earned release credit of one day.

1 3. If sentenced pursuant to any other provision of section 13-703,
2 section 13-704, subsection A, B, C, D or E, section 13-706, subsection A or
3 section 13-708, subsection D or any other provision of law which prohibits
4 release on any basis until serving not less than two-thirds the sentence
5 imposed by the court, every three days served within class one shall be
6 counted as an earned release credit of one day.

7 B. Release credits earned by a prisoner pursuant to subsection A of
8 this section shall not reduce the term of imprisonment imposed by the court
9 on such prisoner, nor reduce the sentence imposed on the prisoner for the
10 purpose of determining such prisoner's parole eligibility.

11 C. Upon reclassification of a prisoner resulting from the prisoner's
12 failure to adhere to the rules of the department or failure to demonstrate a
13 continual willingness to volunteer for or successfully participate in a work,
14 educational, treatment or training program, the director may declare any and
15 all release credits earned by the prisoner forfeited. In the discretion of
16 the director the release credits may subsequently be restored. The director
17 shall maintain an account of release credits earned by each prisoner.

18 D. The director, according to rules adopted by the department, may
19 authorize the release of any prisoner who has earned release credits which,
20 when added to the time served by the prisoner, equal the sentence imposed by
21 the court which shall be the prisoner's earned release credit date. A
22 prisoner on earned release credit release is not under the control of the
23 department and the department is not required to provide parole services or
24 otherwise supervise any prisoner released, except that the department may
25 revoke the release of the prisoner until the final expiration of his sentence
26 if the department has reason to believe that the released prisoner has
27 engaged in criminal conduct during the term of his release. If a prisoner
28 has a term of probation to be completed or served, the probation department
29 shall begin supervision of the prisoner when the prisoner is released on the
30 earned release credit date. If the prisoner's term of probation equals or
31 exceeds the prisoner's final expiration date, the director of the state
32 department of corrections shall issue the prisoner an absolute discharge on
33 the prisoner's earned release credit date. The prisoner is not under the
34 control of the department and the department is not required to provide
35 parole services or otherwise supervise the prisoner. If the prisoner's term
36 of probation is less than the prisoner's final expiration date, the prisoner
37 is not under the control of the department and the department is not required
38 to provide parole services or otherwise supervise the prisoner, except that
39 the department may revoke the release at any time between the earned release
40 credit date and the final expiration date if the department has reason to
41 believe that the released prisoner has engaged in criminal conduct during the
42 term of release. The director may issue the prisoner an absolute discharge
43 from the sentence of imprisonment if it appears that the prisoner will live
44 and remain at liberty without violating the law and it is in the best
45 interest of the state. The state department of corrections shall provide

1 reasonable notice to the probation department of the scheduled release of the
2 prisoner from confinement by the state department of corrections.

3 E. A prisoner shall forfeit five days of the prisoner's earned release
4 credits if the court finds or a disciplinary hearing held after a review by
5 and recommendations from the attorney general's office determines that the
6 prisoner does any of the following:

- 7 1. Brings a claim without substantial justification.
- 8 2. Unreasonably expands or delays a proceeding.
- 9 3. Testifies falsely or otherwise presents false information or
10 material to the court.
- 11 4. Submits a claim that is intended solely to harass the party it is
12 filed against.

13 F. If the prisoner does not have five days of earned release credits,
14 the prisoner shall forfeit the prisoner's existing earned release credits and
15 be ineligible from accruing earned release credits until the number of earned
16 release credits the prisoner would have otherwise accrued equals the
17 difference between five days and the number of existing earned release credit
18 days the prisoner forfeits pursuant to this section.

19 G. This section applies only to persons who commit felonies before
20 January 1, 1994.

21 Sec. 9. Section 41-1604.13, Arizona Revised Statutes, is amended to
22 read:

23 41-1604.13. Home arrest; eligibility; victim notification;
24 conditions; applicability; definition

25 A. An inmate who has served not less than six months of the sentence
26 imposed by the court is eligible for the home arrest program if the inmate:

- 27 1. Meets the following criteria:
 - 28 (a) Was convicted of committing a class 4, 5 or 6 felony not involving
29 ~~the intentional or knowing infliction of serious physical injury or the use~~
30 ~~or exhibition of a deadly weapon or dangerous instrument~~ A DANGEROUS OFFENSE.
 - 31 (b) Was not convicted of a sexual offense.
 - 32 (c) Has not previously been convicted of any felony.
- 33 2. Violated parole by the commission of a technical violation that was
34 not chargeable or indictable as a criminal offense.
- 35 3. Is eligible for work furlough.
- 36 4. Is eligible for parole pursuant to section 31-412, subsection A.

37 B. The board of executive clemency shall determine which inmates are
38 released to the home arrest program based on the criteria in subsection A of
39 this section and based on a determination that there is a substantial
40 probability that the inmate will remain at liberty without violating the law
41 and that the release is in the best interests of the state after considering
42 the offense for which the inmate is presently incarcerated, the prior record
43 of the inmate, the conduct of the inmate while incarcerated and any other
44 information concerning the inmate that is in the possession of the state

1 department of corrections, including any presentence report. The board
2 maintains the responsibility of revocation as applicable to all parolees.

3 C. An inmate who is otherwise eligible for home arrest, who is not on
4 work furlough and who is currently serving a sentence for a conviction of a
5 serious offense or conspiracy to commit or attempt to commit a serious
6 offense shall not be granted home arrest except by one of the following
7 votes:

8 1. A majority affirmative vote if four or more members of the board of
9 executive clemency consider the action.

10 2. A unanimous affirmative vote if three members of the board of
11 executive clemency consider the action.

12 3. A unanimous affirmative vote if two members of the board of
13 executive clemency consider the action pursuant to section 31-401, subsection
14 I and the chairman of the board concurs after reviewing the information
15 considered by the two members.

16 D. Home arrest is conditioned on the following:

17 1. Active electronic monitoring surveillance for a minimum term of one
18 year or until eligible for general parole.

19 2. Participation in gainful employment or other beneficial activities.

20 3. Submission to alcohol and drug tests as mandated.

21 4. Payment of the electronic monitoring fee in an amount determined by
22 the board of not less than one dollar per day and not more than the total
23 cost of the electronic monitoring unless, after determining the inability of
24 the inmate to pay the fee, the board requires payment of a lesser amount.
25 The fees collected shall be returned to the department's home arrest program
26 to offset operational costs of the program.

27 5. Remaining at the inmate's place of residence at all times except
28 for movement out of the residence according to mandated conditions.

29 6. Adherence to any other conditions imposed by the court, board of
30 executive clemency or supervising corrections officers.

31 7. Compliance with all other conditions of supervision.

32 E. Before holding a hearing on home arrest, the board on request shall
33 notify and afford an opportunity to be heard to the presiding judge of the
34 superior court in the county in which the inmate requesting home arrest was
35 sentenced, the prosecuting attorney and the director of the arresting law
36 enforcement agency. The board shall notify the victim of the offense for
37 which the inmate is incarcerated. The notice shall state the name of the
38 inmate requesting home arrest, the offense for which the inmate was
39 sentenced, the length of the sentence and the date of admission to the
40 custody of the state department of corrections. The notice to the victim
41 shall also inform the victim of the victim's right to be present and to
42 submit a written report to the board expressing the victim's opinion
43 concerning the inmate's release. No hearing concerning home arrest may be
44 held until fifteen days after the date of giving the notice. On mailing the

1 notice, the board shall file a hard copy of the notice as evidence that
2 notification was sent.

3 F. An inmate who is placed on home arrest is on inmate status, is
4 subject to all the limitations of rights and movement and is entitled only to
5 due process rights of return.

6 G. If an inmate violates a condition of home arrest that poses any
7 threat or danger to the community, or commits an additional felony offense,
8 the board shall revoke the home arrest and return the inmate to the custody
9 of the state department of corrections to complete the term of imprisonment
10 as authorized by law.

11 H. The ratio of supervising corrections officers to supervisees in the
12 home arrest program shall be no greater than one officer for every
13 twenty-five supervisees.

14 I. The board shall determine when the supervisee is eligible for
15 transfer to the regular parole program pursuant to section 31-411.

16 J. This section applies only to persons who commit felony offenses
17 before January 1, 1994.

18 K. For the purposes of this section, "serious offense" includes any of
19 the following:

20 1. A serious offense as defined in section 13-706, subsection F,
21 paragraph 1, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

22 2. A dangerous crime against children as defined in section 13-705.
23 The citation of section 13-705 is not a necessary element for a serious
24 offense designation.

25 3. A conviction under a prior criminal code for any offense that
26 possesses reasonably equivalent offense elements as the offense elements that
27 are listed under section 13-705, subsection P, paragraph 1 or section 13-706,
28 subsection F, paragraph 1.